Forest Practices Board

Final Report - Forest Practices Board

Planning for the Harvest of Beetle Damaged Timber in Corn Creek

Complaint 950076
December 1998
FPB/IRC/11

Table of Contents

Investigation

Background
Scope of the Investigation

Investigation Findings

Compliance with Code Requirements

Terrain Stability
Spruce Bark Beetle Information
Harvest Constraints
Public Review and Comment

The Board's Evaluation of the District Manager's Decisions

Terrain Stability
Spruce Bark Beetle Information
Harvest Constraints
Public Review and Comment

Conclusions

| Return to Investigation Reports | Home |

Forest Practices Board

Summary

This report concludes the Board's investigation of a complaint about the approval of a forest development plan for Forest Licence A20213 at Corn Creek in the Kootenay Lake Forest District.

In 1994, the Ministry of Forests detected an infestation of spruce bark beetle in the Corn Creek watershed. Corn Creek is located in the Selkirk Mountain Range, approximately 10 kilometres west of Creston, B.C. After carrying out beetle surveys in 1995, the Ministry determined that a significant beetle population was developing.

The Ministry decided that a combination of regular, salvage, and sanitation harvesting was the best forest management strategy for the area, and directed the licensee, J.H. Huscroft Ltd., to accelerate development in the Corn Creek watershed.

In February 1996, the licensee began the public review period and submitted a 1996-2000 forest development plan to the Ministry, which included strategies to manage spruce bark beetle.

Nature of the Complaint

On June 21, 1996, the West Creston Watershed Protection Committee submitted a complaint to the Board concerning ten cutblocks proposed in the forest development plan.

The Committee was concerned that the public review process for the forest development plan was inadequate because terrain stability and spruce bark beetle survey information was not made available for public review prior to the district manager approving the plan. The Committee also stated that information gathered during spruce bark beetle surveys, including potential harvest constraints and site sensitivity, was not incorporated into the forest development plan. Finally, the Committee was concerned that the Ministry of Forests had conducted the beetle surveys, rather than the licensee.

Investigation Findings

The Board considered whether the forest development plan complied with the requirements of the Code, whether the district manager's decisions about these matters were reasonable, and whether the process used to arrive at the decisions was fair.

The Board found that terrain stability assessments for cutblocks had not been completed and were not required to be included in the forest development plan. The Board noted that the Code does not require terrain stability assessments for road construction to be included in a forest development plan, although the information was used in developing the plan.

The Board found that harvest constraint information from the consultant's beetle surveys was not required to be included in the plan. Information from the beetle surveys was used in developing the plans and the plans addressed forest health factors, as required by the Code.

The Board found that it was appropriate for the Ministry to carry out the surveys because the ministry had directed the licensee to accelerate their development plans in Corn Creek to respond to the outbreak of spruce bark beetle. Additionally the acceptance of responsibility by the ministry was consistent with the established regional procedure.

The public review and comment period also exceeded Code requirements and there was no request to extend the period or evidence the review period was not adequate. The complainant was kept informed of the forest health issues and the management strategies to address the issues before and during the public review and comment period for the plan. The licensee also considered comments received from the complainant after the review and comment period had expired, and responded to the complainant before the plan was approved.

The Board found that the submission and approval of the 1996-2000 forest development plan for the Corn Creek area complied with Code requirements for terrain stability, forest health, and public review and comment.

The Board found that the process used to submit and approve the forest development plan was fair, and the decisions made by the district manager in the review and approval of the plan were reasonable.

Conclusions

The Board concludes that the submission and approval of the forest development plan for Forest Licence A20213 for the Corn Creek area complied with Code requirements for terrain stability, forest health, and public review and comment.

The Board notes that the Code was inconsistent with respect to requirements for showing the results of terrain stability assessments for roads and cutblocks in a forest development plan. The results of terrain stability assessments for cutblocks are required to be shown in a forest development plan however the results of terrain stability assessments for road locations are not.

The Board concludes that, with respect to the aspects of the complaint investigated, the decision to approve the forest development plan was reasonable and that the process used to submit and approve the forest development plan was fair.

Investigation

Background

In 1991 a windstorm blew down timber in the vicinity of Corn Creek, creating ideal conditions for the development of a spruce bark beetle infestation. Corn Creek is located in the Selkirk Mountain Range, approximately 10 kilometres west of Creston, B.C.

In 1994, the Ministry of Forests detected an infestation of spruce bark beetle in the Corn Creek watershed during an aerial survey. After carrying out beetle surveys in 1995, the Ministry determined that a significant beetle population was developing.

The Ministry decided that a combination of regular, salvage, and sanitation harvesting was the best forest management strategy for the area and directed the licensee, J.H. Huscroft Ltd., to accelerate their development plans in the Corn Creek watershed. Sanitation harvest requires harvesting of infected trees so that the beetle larva and juveniles can be destroyed during the processing of the logs. Salvage harvest involves harvesting dead timber before it degenerates to non-usable timber for fibre production.

Throughout 1995, the licensee collected terrain stability information and identified a suitable road location into the Corn Creek watershed. In February 1996, the licensee began the public review period and submitted a copy of the 1996-2000 forest development plan, including ten cutblocks in the Corn Creek watershed, to the district manager of the Kootenay Lake Forest District. The district manager approved the forest development plan on August 12, 1996, and the ten cutblocks were harvested in the summer of 1997.

On June 21, 1996, the West Creston Watershed Protection Committee (the Committee) submitted a complaint to the Board concerning the ten cutblocks in the Corn Creek watershed that were proposed in the 1996-2000 forest development plan.

The Committee was concerned that the public review process for the forest development plan was inadequate because terrain stability and spruce bark beetle survey information was not made available for public review prior to the district manager approving the plan. The Committee also stated that information gathered during spruce bark beetle surveys, including information about potential harvest constraints and site sensitivity, was not incorporated into the forest development plan.

Scope of the Investigation

The Board considered three questions in its investigation of this complaint.

1. Did the forest development plan comply with the requirements of the Act and associated regulations for terrain stability, forest health, potential harvesting constraints, and public review and comment?
2. Were the district manager's decisions about these matters reasonable in the circumstances?
3. Was the process fair?

The Board also considered whether there was any evidence to support the complainants concern that information had been withheld.

Investigation Findings

Compliance with Code Requirements

Terrain Stability

The complainant contended that terrain stability reports should have been available for public review with the 1996-2000 forest development plan. Were there any terrain stability reports that were required to be available with the forest development plan at the time of the public review?

Section 15(3)(b) of the *Operational Planning Regulation* requires that the location and nature of areas having unstable or potentially unstable terrain be described in a forest development plan.

Section 25 of the *Operational Planning Regulation* states:

25. (1) For the purposes of section 15(3)(b), a person ... must identify for areas that would be potentially affected by the proposed operations, the following:

> (a) areas mapped on detailed terrain stability maps as having a moderate or high likelihood of landslides;
>
> (b) if no detailed terrain stability mapping has been done, areas identified on reconnaissance-level terrain maps as having unstable or potentially unstable terrain;
>
> (c) if no detailed terrain stability mapping or reconnaissance-level terrain mapping has been carried out, areas with slope gradients greater than 60%.

Detailed terrain stability mapping as described in (a) above had not been done. Reconnaissance level mapping as described in (b) above was in progress at the time of public review, but had not been completed.

In 1994 the licensee began preparation of a total chance plan for Corn Creek. A total chance plan attempts to design the optimum long -term road and cutblock locations for harvesting the timber in the drainage. One of the first assessments undertaken for the plan was a reconnaissance terrain stability review with interim mapping done by a consultant for the licensee. This review and mapping were not considered, by the Ministry of Forests or the certified professional who did the work, to be reconnaissance level terrain stability mapping for the purpose of section 25(1)(b) of the *Operational Planning Regulation*. Therefore, the 1994 review and mapping was refined to produce the reconnaissance level terrain stability mapping which was submitted to the licensee by the consultant in March 1996.

Since the 1996 mapping was not submitted to the licensee until after the copy of the forest development plan was submitted to the Ministry of Forests, at the beginning of the public review period, it was not required to be included in the forest development plan.

The reconnaissance level terrain stability mapping submitted to the licensee in March 1996 would have been required in the submission of the next forest development plan for the area.

Part (c) of section 25(1) requires that if no detailed terrain stability mapping or reconnaissance-level mapping has been carried out, areas with slopes greater than 60% must be identified in the forest development plan, if they exist. The licensee used contour maps to identify areas greater than two hectares having slopes greater than 60%, and no such areas were found in the development area. For the purposes of this investigation, the Board accepts the methodology used to determine if there were unstable slopes that had to be identified.

Therefore, there were no areas having unstable or potentially unstable terrain that were required to be shown in the forest development plan to meet the requirements of section 15(3)(b) of the *Operational Planning Regulation*.

Section 15(6)(f) of the *Operational Planning Regulation* requires that if assessments have been required under section 30 of the *Operational Planning Regulation* the results must be shown in the forest development plan. Such assessments had not been required for the cutblocks in Corn Creek. Therefore the results were not required to be shown in the 1996-2000 forest development plan.

Finding #1

Sections 15(3)(b) and 25 of the *Operational Planning Regulation* require that if completed terrain stability mapping or slope analysis show unstable or potentially unstable terrain in the plan area, it must be shown in the forest development plan. Sections 15(6)(f) and 30 requires that the results of detailed terrain stability field assessments prepared for cutblocks be shown in a forest development plan.

No completed terrain stability mapping or slope analysis showed unstable or potentially unstable terrain, and no detailed terrain stability assessments had been prepared for cutblocks. The results of terrain stability assessments were not required to be included in the forest development plan.

There are also requirements for terrain stability field assessments prior to road construction. Should these terrain stability field assessments have been available with the forest development plan?

Section 3(5) of the *Forest Road Regulation* states:

3. (5) Before the holder of an agreement under the Forest Act or Range Act carries out road construction or modification or deactivation, the holder must carry out a terrain stability field assessment to the satisfaction of the district manager, if the area

(a) has been identified in a forest development plan as having

(i) a moderate or high likelihood of landslides, based on detailed terrain stability maps,

(ii) unstable or potentially unstable terrain, based on reconnaissance-level terrain maps if no detailed terrain stability mapping has been done, or

(iii) slope gradients greater that 60%, if no detailed terrain stability mapping or reconnaissance-level mapping has been carried out;

(b) has indicators of slope instability, or

(c) has been identified by the district manager as requiring a terrain stability field assessment.

The forest development plan stated that "on road locations located on slopes greater than 50%, a … survey has been completed in order to generate the appropriate survey and design." In fact, two surveys were done on two different sections of the road.

These surveys were done on road locations with greater than 50% slope. They were completed in 1995 and resulted from the reconnaissance level terrain stability work started in 1994. The statement in the forest development plan acknowledged that the detailed surveys on the road locations had been completed. The Board considers the surveys to be detailed terrain stability assessments. However, section 3(5) of the *Forest Road Regulation* does not require that the actual results of the assessments on road locations be included in the forest development plan.

Section 11 of the *Operational Planning Regulation* requires use of the most comprehensive and accurate information available when preparing a forest development plan. The terrain stability information,

generated from 1994 until the forest development plan was submitted, was part of the information used by the licensee in preparation of the plan.

Finding #2

The terrain stability information on the road locations was part of the information used in preparation of the forest development plan as required by section 11 of the *Operational Planning Regulation*.

The Code does not require the terrain stability field assessments for road construction to be shown in the forest development plan.

Spruce Bark Beetle Information

The complainant stated that surveys to determine the extent and severity of the spruce bark beetle outbreak should have been carried out by the licensee, and not the Ministry of Forests. Should the licensee have conducted the surveys?

Section 29(1)(b) of the *Operational Planning Regulation* states that "a person must…conduct pest incidence surveys, if required by the district manager, to determine the nature and extent of the forest health factors".

In this case, the district manager did not require the licensee to conduct beetle surveys. Instead, consistent with a regional procedure entitled "*Guidelines for Bark Beetle Management Responsibilities Under the Forest Practices Code*", the ministry accepted responsibility for undertaking the surveys and hired a consultant to do the work. The guidelines place the responsibility on the licensee for doing ground surveys within 1 kilometre of existing or approved roads. In Corn Creek, there were no roads within 1 kilometre of the beetle infestation and normal ministry procedure would not have placed the responsibility on this licensee.

Section 11 of the *Operational Planning Regulation* requires a person preparing an operational plan to use the most comprehensive and accurate information available. Although the Ministry of Forests had undertaken the beetle surveys, the forest health information was conveyed to the licensee through meetings and field trips. Information from the beetle surveys was used by the licensee in the preparation of the forest development plan.

Finding #3

The district manager did not require the licensee to conduct pest incidence surveys under section 29 of the *Operational Planning Regulation*. Therefore, there was no Code requirement for the licensee to undertake the surveys.

Information from the beetle surveys that were undertaken for the Ministry of Forests was used in preparation of the forest development plan, as required by section 11 of the *Operational Planning Regulation*.

Section 15(6)(e) of the *Operational Planning Regulation* requires that a "person must ensure that a forest development plan sets out… the results of any evaluation of forest health factors that is required to be carried out under section 29." Did the forest development plan incorporate the evaluation of forest

health factors as required by the Code?

Section 29 of the Regulation states:

29 (1) For the purposes of section 17(3)(c) of the Act and section

15(6)(e) of this regulation, a person must:

a. record and evaluate the occurrence of detected forest health factors currently causing damage or which may potentially cause damage in the area under the plan,
b. conduct pest incidence surveys, if required by the district manager, to determine the nature and extent of the forest health factors, and
c. if there are significant risks to forest resources detected under paragraph (a) or (b), propose management strategies to reduce those risks during the term of the plan.

The forest development plan did evaluate forest health factors and did record and evaluate the spruce bark beetle infestation. The plan stated that "the major susceptible types were ground surveyed last year and significant developing populations persist which pose a threat to the remaining healthy spruce stems."

The plan also included management strategies to reduce the risk to forest resources as required by section 29(1)(c). The section of the forest development plan entitled "Management Strategies Identified for Forest Health Factors" stated:

"Our company has undertaken an accelerated road construction program in order to salvage dead and dying stems. At this point in time, the infestation is so far advanced that this operation is mainly for salvage rather than population control.

In situations, where we are certain that access will occur in 1996, we will consider a trap tree program if infected tree sampling indicates a significant flight in 1996. Due to the uncertainty associated with road permit and cutting permit approval, our Company is not willing to assume the risk of a significant trap tree program creating a bigger problem due to the untimely removal of trap trees.

It is our intention to develop and harvest as much of the infested area as possible during the 1996 operating season. On sites where harvesting is complete, we would entertain trap tree programs to remove residual populations from the logging slash and from the perimeter area such as riparian reserve zones where harvesting cannot occur."

With regard to pest incidence surveys, the Code requires that the results, but not necessarily the entire survey reports, be included in a forest development plan only if the district manager required the licensee to carry out the surveys. In this case, the district manager did not require the licensee to conduct the survey. Therefore, the survey results did not have to be included in the forest development plan.

Finding #4

The forest development plan complied with the Code with respect to the evaluation of forest health factors. The forest development plan recorded and evaluated the spruce bark beetle infestation and included management strategies to reduce the risk to forest resources.

Harvest Constraints

When the consultants conducted the beetle survey, they made observations about sensitive sites and constraints on road building and harvesting. They included recommendations in their summary report. The complainant asserted that this information should have been incorporated into the forest development plan. Should the consultant's observations about harvesting feasibility and their recommendations about operational constraints have been incorporated into the forest development plan?

There is no Code requirement that recommendations about potential harvesting constraints made in a report summarizing the results of a beetle survey must be included in a forest development plan. This is to be expected since those type of recommendations would normally be beyond the expertise of the individuals conducting the pest surveys. They are often part of the field observations recorded by the pest surveyor in the course of conducting fieldwork and are useful in that regard. But they do not carry weight as recommendations about harvesting constraints.

Finding #5

The Code does not require that recommendations about harvesting constraints made in a report summarizing the results of a beetle survey be included in a forest development plan.

Public Review and Comment

The complainant was concerned that the public review process for the forest development plan was inadequate since the terrain stability and spruce bark beetle survey information was not made available in time for the public to review it prior to the district manager's approval of the plan. The results of the beetle survey were not made available to the complainant until 11 days before the end of the review and comment period. Was the public review process adequate?

The review and comment period for the forest development plan lasted 69 days, from February 28, 1996, to April 29, 1996. Section 4(1) of the *Operational Planning Regulation* requires that the review period be a minimum of 60 days. Section 4(4) requires that the period be adequate. Section 4(5) requires that any written comments received during the public review period be reviewed by the licensee, and revisions be made to the plan as appropriate. No comments were received from the public during the review and comment period and, therefore, no revisions were made to the plan.

The delay in making the beetle surveys available to the complainant did not compel the district manager to extend the review and comment period. He did not receive any requests to extend the review and comment period and had no information that the period was not adequate.

Finding #6

The public review and comment period for the forest development plan exceeded the minimum requirements of the Code. There was no request to extend the period and no evidence that the period was not adequate.

The Board's Evaluation of the District Manager's Decisions

When a complaint concerns the exercise of discretion by a statutory decision-maker under the Code, the Board generally chooses to comment on the exercise of that discretion. The Code gives decision-makers discretion to make decisions. The Board reviews these decisions to help ensure that resources are managed and conserved in the public's interests under the Code.

The standard the Board uses in evaluating discretionary decisions is not whether the decision is the best decision. It is:

"Was the decision consistent with sound forest practices, did it achieve the intent of the Code and was it based on an adequate assessment of available information?"

The Board considers additional factors related to the circumstances of a decision before reaching a conclusion. The Board may also consider whether the decision-making process was fair. The Board considers these questions in the context of general public expectations about how decisions are made under the Code. In reporting its conclusions, the Board uses the ordinary meaning of terms like "reasonable", "appropriate", "adequate" and "fair".

In the circumstances of this complaint, the Board examined the district manager's decisions regarding the detailed terrain stability assessments and spruce bark beetle survey, and the opportunity for review by the complainants.

Terrain Stability

Recognizing that no terrain stability assessments had been completed for cutblocks and assessments for roads were not shown in the plan, was it appropriate for the district manager to approve the forest development plan?

The forest development plan stated that the terrain stability assessments for the road location had been used to determine an appropriate road design, however the results of the assessments were not included in the plan. As stated earlier, the Code does not require that the results of terrain stability assessments for road location be shown in the forest development plan.

Even if the results of the assessments for the road location were required to be shown in the plan, the Board is satisfied that the terrain stability information for the road location substantially met the content requirements of a forest development plan.

Finding #7

It was appropriate for the district manager to approve the forest development plan because it met the content requirements of the Code. Although the forest development plan was not required to contain the results of detailed terrain stability assessments, the plan did state that terrain stability assessments for the road location had been conducted and would be used to generate the appropriate road design.

Terrain stability assessment information was, however, available for the road location. This information could have been provided in the forest development plan despite the lack of requirement to do so. The complainant could then have reviewed potentially unstable areas with respect to the road location, and provided comments to the licensee during the review period.

Finding #8

The results of the terrain stability assessments for the road location could have been shown in the forest development plan even though this is not required by the Act. This would have assisted the complainant's review of the plan.

The terrain stability assessments for the cutblocks were not complete at the time the forest development plan was submitted and approved.

Section 4(6) of the *Operational Planning Regulation* provides for making the results of assessments available to the public before the approval of a silviculture prescription. Section 4(6) states:

> 4 (6) For the purposes of section 15(6), before
>
> a. a person submits a silviculture prescription for approval under section 41 of the Act, or
>
> b. the district manager gives effect to a silviculture prescription under section 40 of the Act, for an area under a forest development plan,
>
> the results of assessments carried out under sections 26 to 28 and 30 must, subject to section 7, be made available for review and comment in accordance with this section.

In effect, this regulation ensured that if the assessments of the cutblocks had not been completed at the time the forest development plan was submitted, the assessments would be made available to the public prior to approval of silviculture prescriptions.

This allowed the district manager to approve the forest development plan and to require that the results of the assessments of the cutblocks be made available to the public before an approval of silviculture prescriptions. The licensee and the district manager planned to use this process to ensure that the assessments required by the Code, but not completed for the forest development plan, would be available before the detailed plans were approved and logging began.

After the complaint was submitted to the Board, the terrain mapping for the cutblocks was submitted to the licensee by the consultant. The licensee superimposed the terrain mapping over the approved cutblocks but the two maps had different map bases. The result was that portions of some cutblocks in the forest development plan apparently overlapped areas mapped as having a high likelihood of landslides. The previously submitted silviculture prescriptions for cutblocks were then withdrawn. The cutblocks were field reviewed, revised and re-submitted for an emergency forest development plan amendment. The amendment was advertised and referred to the complainant.

Finding #9

The manner in which the district manager approved the forest development plan, but ensured that required assessments would be completed and made available to the complainant before harvesting began, was fair. The approval process for the silviculture prescriptions would ensure that the assessments were reviewed for compliance with the Code.

Spruce Bark Beetle Information

The Ministry of Forests assumed the responsibility for conducting a beetle survey, and hired a consultant for that purpose. Was it appropriate for the district manager to assume responsibility for the beetle survey?

In 1994 the ministry directed the licensee to accelerate development of a road and cutblocks into Corn Creek to address the beetle infestation. The task of planning the operations was given to the licensee, while the ministry took on the responsibility for undertaking a survey to assess the beetle population. This assignment of responsibilities by the ministry was consistent with the established procedures in the region for bark beetle management.

Finding #10

The district manager did not require the licensee to conduct pest incidence surveys in Corn Creek. Instead, the district took on the responsibility for the surveys.

The Board finds that this was appropriate because the Ministry of Forests had directed the licensee to accelerate their development plans in Corn Creek to respond to the outbreak of spruce bark beetle. Additionally the acceptance of responsibility by the ministry was consistent with the established regional procedure.

The district manager decided to accept the forest development plan as meeting the content requirements for evaluation of forest health factors. Was this decision reasonable?

The *Forest Development Plan Guidebook* sets a general forest health objective "to show how forest health factors for the area under the plan will be addressed to reduce the risks to the forest resources."

The *Forest Development Plan Guidebook* suggests states on p. 11 that:

The forest development plan should detail historic locations of known major pests and provide an indication of the potential for future expansion of pest areas. Current outbreaks should be mapped and the risk of future expansions predicted based on surrounding susceptible host species. The district manager may require a survey regime (timing, location, and other details) to determine the nature and extent of forest health factors. Any strategy for treating the damaging agent should consider the impacts on other forest resources and provide sufficient detail for ministry staff to critique the management option. The plan should state the intention of the proposed management strategy and the time frame envisioned for successful completion.

- The plan should detail locations of known major outbreaks and provide an indication of the potential for future expansion of pest areas.
- Current outbreaks should be mapped and the risk of future expansions predicted based on surrounding susceptible host species.
- The district manager may require a survey regime (timing, location and other details) to determine the nature and extent of forest health factors.
- Any strategy for treating the damaging agent should consider the impacts on other forest resources and provide sufficient detail for ministry staff to critique the management option.
- The plan should state the intention of the proposed management strategy and the time frame envisioned for successful completion.

The forest development plan located the outbreak of spruce bark beetle at Corn Creek. The ministry knew that a significant beetle population was developing, but the district manager did not require the licensee to conduct a survey to determine the nature and extent of the forest health factors. The strategy was to salvage harvest, and if road access could be developed in time, possibly trap beetles. In 1995, the susceptible stands were shown in the 1995-1999 forest development plan by the licensee.

The 1996-2000 plan showed cutblocks in detail but there was no indication, other than forest cover, of the susceptible stands. The licensee could have obtained the beetle surveys from the ministry and mapped the current outbreaks in the plan. However, given the dynamics of the spruce beetle population and the split of responsibility for evaluating the forest health problem, the district manager made the decision to accept the plan as meeting content requirements for evaluation of forest health factors.

Finding #11

The Board is satisfied that the district manager's decision to accept the evaluation of forest health factors as meeting the content requirements for a forest development plan was reasonable.

The decision reflected the dynamics of the spruce beetle population, and was consistent with the ministry's responsibility for evaluating the forest health problem.

Was the process used to keep the complainant informed of the evaluation of the spruce bark beetle surveys and management strategies fair?

The licensee, Ministry of Forests, and the complainant met on January 30, 1995, to discuss the infestation in the Corn Creek basin. The complainant had been advised that the infestation was serious and would require an accelerated forest development plan to deal with the problem. The emergency provisions of the Code could have been used to expedite the approval of the harvesting program , but they were not. The licensee included management strategies for forest health in the 1995-1999 forest development plan as well as the 1996-2000 plan. Both plans were made available for public review. The public and the complainant were kept informed of the infestation and potential management strategies throughout the process. The reasons for the sanitation harvest had been explained to the public and the complainant before and during the review and comment period for the 1996-2000 forest development plan.

Finding #12

The ongoing process of updates, field trips, and forest development plan review opportunities used to keep the complainant informed of forest health factors and management strategies was fair.

Harvest Constraints

The licensee's forest development plan did not include the consultant's harvest constraint recommendations. Was it reasonable for the district manager to approve the plan?

There was no legal requirement to include the consultant's harvest constraint observations in the forest development plan. The consultant was hired to identify where the beetles were and the dynamics of the populations. Observations about harvest constraints and recommendations were supplemental.

Furthermore, the units surveyed for evaluation of the beetle population were not necessarily the blocks that would be developed for harvesting. In fact, some of the areas with beetle activity may not have been accessible to harvest.

Finding #13

The consultant's primary job was to survey the beetle population for the Ministry of Forests. The licensee was responsible for the development of the area for timber harvesting.

The Board finds that it was reasonable for the district manager to approve the licensee's plan without requiring that the beetle surveyor's harvest constraint observations and recommendations be included.

Recognizing that the harvest constraint observations made by the beetle surveyors were not included in the plan, was there a fair process in place to allow for review of the harvesting and silvicultural systems proposed in the plan?

The licensee and ministry met with the complainant on many occasions to explain the forest health factors and the plans for developing the area for timber harvest. These meetings started before the plan was advertised and the meetings continued well after the complaint was submitted. At the time the plan was approved, it was recognized that future assessments would be required before harvesting commenced. The operational plans were the appropriate place to deal with harvesting constraints, not the beetle survey results, and the process for review of the plans was fair.

Finding #14

The Board concludes that the process for review of the harvesting and silvicultural systems was fair.

The Board concludes that the process for review of the harvesting and silvicultural systems was fair.

Public Review and Comment

The complainant felt that the public review and comment period was inadequate because the results of the beetle surveys were not made available until 11 days before the end of the 69 day public review and comment period. The complainant was also concerned that the licensee and Ministry of Forests systematically withheld information that did not support their plans.

The complainant claimed there had been repeated requests for terrain stability assessments. The district and licensee both claimed that there were no such requests. The Board established that there were no written requests for terrain stability assessments but, despite considerable effort, could not determine which assertion was correct.

Finding #15

The Board found no evidence that information had been withheld, and could not determine whether the terrain stability assessments had been requested.

The Board also established that a representative of the complainant telephoned a manager in the Ministry of Forests district office and requested copies of the beetle survey when he learned that there was a survey. The manager offered to bring the survey summaries to an already scheduled meeting regarding the beetle infestation. The complainant insisted that they needed to see them immediately and a meeting with the ministry was scheduled. One week after the request, and 11 days before the end of the public review and comment period, the beetle surveys were provided to the complainant. The complainant did not submit comment on the forest development plan before the review period ended.

The beetle survey information was in summary form and was presented in an understandable manner. The Board is of the opinion that the complainant had enough time to provide comments or to request an extension within the time period allowed for review of the plan.

The licensee did consider comments received from the complainant after the review and comment period had expired, and responded to the complainant before the plan was approved. The district manager was also aware of the complainant's concerns and the licensee's response before the plan was approved.

The complainant had met with the licensee and the ministry on January 30, 1995 to discuss the infestation in the Corn Creek area. They had been advised that the infestation was serious and would require an accelerated forest development plan to deal with the problem. The emergency provisions of the Code could have been used to expedite the approval of the harvesting program, but they were not.

Finding #16

The public review and comment period met Code requirements and the complainant had adequate time to review the plan and provide comments. Although the complainant did not comment on the plan until after the public review period had expired, the licensee did consider the comments and provide a response.

The district manager's decision that the plan was prepared and submitted in accordance with the public review and comment requirements of the Code was reasonable.

The complainant was kept informed of the forest development planning in Corn Creek through regular updates, field trips and through the opportunity to review and comment on the forest development plan. The public review and comment process was fair.

Conclusions

The Board concludes that the submission and approval of the forest development plan for Forest Licence A20213 for the Corn Creek area complied with Code requirements for terrain stability, forest health, and public review and comment.

The Board notes that the Code was inconsistent with respect to requirements for showing the results of terrain stability assessments for roads and cutblocks in a forest development plan. The results of terrain stability assessments for cutblocks are required to be shown in a forest development plan however the results of terrain stability assessments for road locations are not.

Although the results of the terrain stability assessments for the road location were not required by the Code to be shown in the forest development plan, the information was readily available, and was

provided to the complainant after the review and comment period. It would have been helpful for this information to be shown in the forest development plan for the benefit of the complainant.

The Board concludes that, with respect to the aspects of the complaint investigated, the decision to approve the forest development plan was reasonable and that the process used to submit and approve the forest development plan was fair. The Board also found that it was appropriate for the Ministry to undertake the beetle surveys.

The complainant asserted that information had been withheld from them, and that they had made repeated requests for the terrain stability assessments. The Board found no evidence that information had been withheld, and could not determine whether the terrain stability assessments had been requested.

The Board concludes that the complaint is not substantiated.